

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WISCONSIN RIGHT TO LIFE
COMMITTEE, INC., et al.,

Plaintiffs,

v.

Case No. 10-C-0669

GORDON MYSE, THOMAS BARLAND,
MICHAEL BRENNAN, THOMAS CANE,
DAVID DEININGER, GERALD NICHOL,
and JOHN CHISHOLM,

Defendants.

ORDER DENYING PLAINTIFFS' MOTION TO LIFT STAY (DOC. # 36), STRIKING
PLAINTIFFS' REPLY BRIEF (DOC. # 38), AND DENYING PLAINTIFFS' MOTION FOR
LEAVE TO FILE A REPLY BRIEF (DOC. # 40)

On September 17, 2010, the court granted defendants' motion to abstain and stay this action until such time as the Wisconsin Supreme Court made a ruling on the constitutionality of Wis. Admin. Code GAB § 1.28 (2010), and other challenged statutes and regulations. See Doc. # 31. The court determined that abstaining and staying the action was prudent under the *Pullman* abstention doctrine as a matter of judicial comity and federalism. See *id.* The plaintiffs' motion for partial reconsideration was denied on October 15, 2010. See Doc. # 35. WRTL-SPAC now seeks an order lifting the stay as to Count 9 of the complaint. See Doc. # 36. The defendants oppose the motion. See Doc. # 37.

Count 9 of the complaint raises an as-applied challenge to the financial contribution limits established under Wisconsin law. WRTL-SPAC asserts that it "engages in independent spending for political speech" and "does not make contributions." See Doc.

36 at p.2. It contends that “those who seek to contribute to WRTL-SPAC beyond Wisconsin’s contribution limit . . . have a First Amendment right to engage in the same speech as WRTL-SPAC.” See *id.* As such, they argue, “Wisconsin’s contribution limit is unconstitutional as applied to the contributions WRTL-SPAC seeks to receive” *Id.* WRTL-SPAC goes on to argue that the court should lift the stay for four reasons: 1) It “needs to raise money for speech beyond Wisconsin’s limit.”; 2) the Wisconsin Supreme Court has postponed oral argument in its case until September 2011; 3) GAB § 1.28 “does not affect the contribution limit” plaintiff challenges; 4) Count 9 “presents a straightforward challenge.” See *id.* at p.3. In opposing the motion to lift the stay, defendants cite the need to avoid piecemeal litigation and making multiple or confusing pronouncements on matters of state law. See Doc. # 37 at pp.1-2.

The court is unpersuaded by plaintiffs’ arguments. The reasons underlying the court’s decision to abstain under the *Pullman* doctrine apply with equal force today. See Doc. # 31.

As a separate matter, WRTL-SPAC filed a reply brief without leave of court. See Doc. # 38. However, “[n]o reply brief is permitted absent leave of Court.” Civ. L. R. 7(h)(2). Consequently, the court will strike the filing. Also, the court notes that WRTL-SPAC’s submission fails to comply with other dictates of L.R. 7(h)(2), as it exceeds the 3 page limit for such motions, excluding the caption and signature block. After this filing error was brought to the attention of WRTL-SPAC by defendants, see Doc. # 39, WRTL-SPAC filed a motion seeking leave to file a proper reply brief. See Doc. # 40. However, no additional briefing is necessary. Therefore,

IT IS ORDERED that plaintiffs' motion to lift stay is denied.

IT IS FURTHER ORDERED that WRTL-SPAC's reply brief is stricken pursuant to General Local Rule 83(f).

IT IS FURTHER ORDERED that WRTL-SPAC's motion for leave to file a reply brief is denied.

Dated at Milwaukee, Wisconsin, this 12th day of July, 2011.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
CHIEF U. S. DISTRICT JUDGE